

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

PALATIUMCARE, INC.,

Plaintiff,

v.

NOTIFY LLC and LUCAS NARBATOVICS,

Defendants.

Case No. 2:22-cv-217

COMPLAINT

Plaintiff PalatiumCare, Inc. (“PalCare”), for its Complaint against Defendants Notify LLC (“Notify”) and Lucas Narbatovics (collectively, “Defendants”), and pursuant to 17 U.S.C. § 501, states as follows:

NATURE OF THE LAWSUIT

1. This case is about the theft and copying of PalCare’s intellectual property, including its confidential, proprietary, and copyrighted source code.
2. Sheboygan-based PalCare provides a complete end-to-end technology infrastructure related to emergency call systems for senior living facilities. It has spent years and millions of dollars developing the technology at issue in this case. Central to this technology is PalCare’s copyrighted Pal Base 3 source code (version 3.1.50) and Device Test Suite source code (collectively, the “PalCare Code”).
3. Defendants have brazenly raided PalCare’s computer systems and the PalCare Code in order to directly compete against PalCare. Defendants have sought to use this stolen intellectual property to take away PalCare’s business opportunities that were built through countless man-hours and millions of dollars of investments.

4. PalCare previously filed a lawsuit in the Sheboygan County Circuit Court for the State of Wisconsin on April 5, 2021, alleging causes of action against Defendants Notify LLC and Lucas Narbatovics for breach of contract, misappropriation of trade secrets, theft under Wis. Stat. § 943.20, and violation of Wisconsin’s Computer Crimes Act (“CCA”) under Wis. Stat. § 943.70. *See PalatiumCare, Inc. v. Notify LLC*, 2021-CV-000120, Dkt. No. 4 (Wis. Cir. Ct. Apr. 9, 2021) (the “State Court Action”).

5. On November 12, 2021, in the State Court Action, Defendants filed a motion to dismiss PalCare’s Second Amended Complaint, arguing, as relevant here, that the Sheboygan County Circuit Court lacked subject matter jurisdiction over PalCare’s cause of action for theft. In particular, Defendants argued, “[t]he alleged unlawful acts that Narbatovics committed – copying, transfer, and use of Plaintiff’s source code – consist of the same elements that would support a violation of the Copyright Act.”

6. At a hearing on January 25, 2022, the Sheboygan County Circuit Court accepted Defendants’ argument and granted their motion to dismiss as to PalCare’s theft claim, finding that the claim as alleged was preempted by federal copyright law.

7. PalCare brings this action to stop Defendants from continuing to exploit PalCare’s stolen copyrighted works and for the damages caused by the wrongs they have perpetrated on PalCare.

PARTIES

8. PalCare is a Wisconsin corporation with its principal place of business located at 909 North 8th Street, Suite 201, Sheboygan, Wisconsin.

9. Defendant Notify is a Minnesota LLC with a principal executive office at 12400 Whitewater Dr., Suite 2010, Minnetonka, MN 55343. Notify also has a registered office located at 1010 Dale St. N., St. Paul, MN 55117.

10. Defendant Narbatovics is a citizen of Sheboygan County, Wisconsin and resides at W8405 Tower Drive, Adell, Wisconsin.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction because this litigation arises under the federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction over Notify. On information and belief, during all relevant times under this Complaint, Notify conducted substantial and not isolated business activities within the State of Wisconsin and within this District. For example, Notify directly conducted business with PalCare, including through a Marketing and Sales Agreement (“MSA”) that was executed on February 10, 2020. The parties entered into a Cancellation Agreement to terminate the MSA on November 6, 2020. Furthermore, Notify was registered with the Wisconsin Department of Financial Institutions to conduct business in Wisconsin at least until June 13, 2021, when the company was administratively dissolved for purposes of doing business in Wisconsin.

14. This Court has personal jurisdiction over Narbatovics as he resides in this District.

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to PalCare’s claim occurred in this District,

where PalCare's principal place of business is located. Venue is also proper in this District under 28 U.S.C. § 1400(a) because Narbatovics resides in this District.

FACTUAL ALLEGATIONS

PalCare's Highly Successful Business

16. PalCare is a leading hardware and software company focusing on wireless nurse call systems for senior care facilities and retirement communities. PalCare was founded in 2004 in Sheboygan, Wisconsin by two individuals, Joseph Hasenstein (PalCare's Chief Operating Officer) and Steven Redeker. Over the years, PalCare has steadily grown its business and the company now employs over 30 individuals.

17. PalCare integrates cutting edge technology with the features that care facilities look for to create an unrivaled system. PalCare provides innovative, state-of-the-art solutions in the senior care field, with the goal of providing increased independence and safety to the senior community through technology.

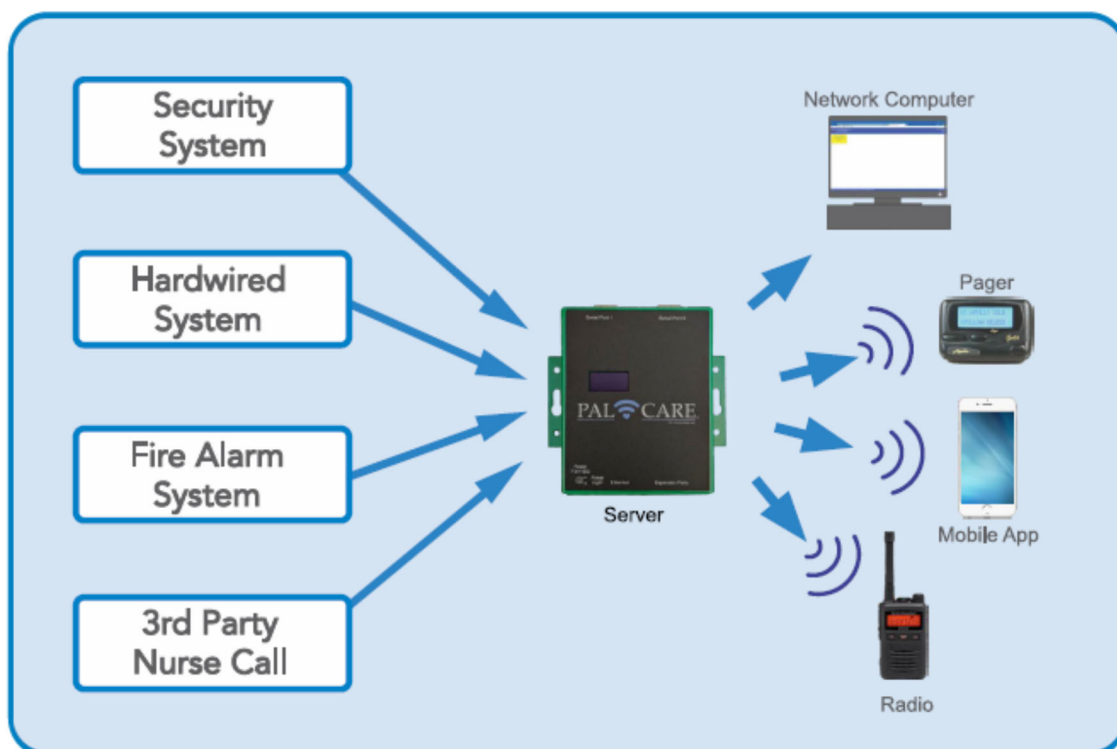
18. PalCare's products include emergency alert management systems, wireless nurse calls, security and access controls, wander management, remote monitoring, and other hardware and devices to improve coverage and capability. PalCare provides implementation services to its clients, as well as ongoing support.

19. PalCare's commercial success is built on its platform of hardware and software products. PalCare's copyrighted source code for its products operates on what PalCare employees call a "green server." The most important source code stored on the green server is the Pal Base 3 source code, which operates PalCare's proprietary Nurse Call System and Network Operations Center. The Nurse Call System operates to provide PalCare customers,

such as senior living facilities, with an ecosystem of devices that can timely alert staff whenever there is an individual in need of care.

20. PalCare's source code, including, but not limited to, its Pal Base 3 and Device Test Suite source code, is protected by U.S. copyright law. PalCare has registered these copyrighted materials with the U.S. Copyright Office. The Pal Base 3 code is registered with the Copyright Office under Registration No. TX 9-076-129. The Device Test Suite code is registered with the Copyright Office under Registration No. TXu 2-301-641.

21. Below is a high-level diagram from PalCare's website depicting a sample ecosystem operating PalCare's Nurse Call System and Network Operations Center. The Pal Base 3 source code operates on the black "Server" box.



Narbatovics Was a Highly Trusted Senior Employee

22. Narbatovics was a highly trusted senior level PalCare employee; in fact, Narbatovics was a member of PalCare's Executive Committee before departing PalCare. Narbatovics departed PalCare in September 2020.

23. Narbatovics joined PalCare (previously called AdCom Technologies, Inc.) in August 2008. Narbatovics worked as a Senior Network Engineer until January 2016, when he was promoted to Vice President of Software Development. He was then promoted to Chief Product Officer in 2020. As Chief Product Officer, Narbatovics was a member of PalCare's executive team. Narbatovics was in charge of PalCare's software development, which included directly overseeing the development of PalCare's copyrighted Pal Base 3 and Device Test Suite source code. Narbatovics also provided PalCare's internal IT support, including setting up and maintaining the GitLab account that he later used to access and steal PalCare's copyrighted source code.

24. While employed at PalCare, Narbatovics had access to PalCare's proprietary and copyrighted source code, including, but not limited to, the PalCare Code and PalCare's confidential and proprietary green server, hardware, and demo kits. Notably, testing hardware and devices, which could be used to provide demonstrations to actual and potential customers, contained all of the necessary hardware and software—including a copy of the copyrighted Pal Base 3 server source code—to operate an ecosystem of PalCare warning devices. Also, as noted above, Narbatovics routinely worked with and developed PalCare's highly confidential source code for its products and supervised others who developed this code.

PalCare and Notify Enter Into a Marketing and Sales Agreement

25. In 2020, PalCare entered into a marketing and sales agreement with Notify that allowed PalCare to license Notify's proprietary and copyrighted software to PalCare's customers. Notify's software included a communications application targeting senior communities that could be used in conjunction with PalCare systems used by senior communities. In particular, PalCare's Nurse Call System allows for alerts and notifications to be sent to care providers through a number of different devices, including, for example, computers, pagers, radios, and mobile phones. Notify's software application installed on mobile phones allows for alerts and notifications as part of PalCare's proprietary system.

26. PalCare and Notify executed a Marketing and Sales Agreement ("MSA") on February 10, 2020.

27. In Section 9 of the MSA, Notify acknowledged that "the right, title to and ownership of and all Intellectual Property rights in or related to PalCare's Intellectual Property and the PalCare System, other than the [Notify] Software, shall at all times remain with PalCare."

Notify Terminates the MSA and Hires Narbatovics

28. In September 2020, Narbatovics resigned from PalCare and, at least initially, began working for Intrac Technology, an IT consulting company based in Sheboygan.

29. On November 1, 2020, Narbatovics joined Notify as a full-time employee.

30. By that time, Notify had already hired James Gischia, PalCare's former Vice President of Business Development. Gischia also was a member of PalCare's executive team. His responsibilities included designing and executing PalCare's business growth strategy. Gischia was in charge of managing PalCare's core dealer relationships, i.e., the companies that would purchase and resell PalCare's products. Gischia thus had knowledge of and directly

interacted with numerous PalCare customers, including, in particular, Storm Medical Equipment, Inc. (“Storm Medical”), Direct Supply, Inc. (“Direct Supply”), HarborChase, and Notify.

31. With two of PalCare’s trusted, senior level employees now at Notify, Notify no longer needed the MSA or for PalCare to sell its app. In or around September 2020, Notify told PalCare that it no longer wished to be a party to the MSA. On November 6, 2020, the parties entered a Cancellation Agreement that immediately terminated the MSA.

Narbatovics Raids PalCare’s Copyrighted Pal Base 3 Source Code to Benefit Notify

32. Narbatovics was not authorized to copy, publicly display, distribute, create derivative works of, or otherwise profit from any copyrighted works belonging to PalCare before or after his employment at PalCare ended.

33. Narbatovics repeatedly accessed and downloaded the copyrighted PalCare Code following termination of his employment at PalCare.

34. On March 22, 2021, PalCare’s Chief Operating Officer Joseph Hasenstein uncovered a long-running and systematic raid of PalCare’s secure server and code by Narbatovics. Hasenstein conducted a forensic analysis that indicated that Narbatovics accessed PalCare’s secure server at least five times without permission after his employment had been terminated and that during one of the improper visits to the secure server, he downloaded branches of PalCare’s copyrighted and highly confidential Pal Base 3 and Device Test Suite source code.

35. As described more fully below, the forensic analysis showed that Narbatovics improperly accessed PalCare’s secure server on at least the following dates: (1) October 13, 2020; (2) October 19, 2020; (3) October 26, 2020 (twice); (4) October 28, 2020; (5) October 31,

2020; (6) November 6, 2020; (7) November 16, 2020; (8) November 19, 2020; and (9) February 26, 2021 (twice).

36. During his unauthorized remote access of PalCare's server on the above-referenced dates, Narbatovics downloaded highly confidential copyrighted source code, including PalCare's Pal Base 3 and Device Test Suite source code, without PalCare's permission.

37. This systematic raid of PalCare's secure server was discovered by Hasenstein when he was setting up access to the secure server for an external consultant.

38. Upon reviewing the list of users in GitLab, a secure repository of PalCare's source code, Hasenstein noticed recent login activity on the Administrator account that had occurred on March 9, 2021. Because the Administrator account was not associated with an individual user and no one outside of PalCare should have had access, it should not have had any login history. The login activity on the Administrator account came from the IP address 24.196.117.82.

39. Hasenstein researched this IP address on <https://www.whatismyip.com/ip-address-lookup/>, which allows anyone to look up certain information relating to an IP address, including, for example, the approximate city and state of the IP address as well as the Internet service provider (ISP) associated with the IP address.

40. Hasenstein's search for IP address 24.196.117.82 on the site revealed that the user of this IP address was located in the Fond du Lac / Sheboygan, Wisconsin region. Below is a screenshot from the IP Address Lookup results Hasenstein took on March 22, 2021.

IP Tools

[Internet Speed Test](#)
[IP Address Lookup](#)
[IP Address Hostname Lookup](#)
[IP WHOIS Lookup](#)
[Server Headers Check](#)
[Email Header Analyzer](#)
[Blacklist Check](#)
[User Agent Info](#)
[DNS Lookup](#)
[Reverse DNS Lookup](#)
[Proxy Check](#)
[Port Scanner](#)

How To

Knowledge Base

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Questions & Answers

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IP Address Lookup

IP: 24.196.117.82

Lookup

IP Address	24.196.117.82
ASN	20115
City	Fond du Lac
State/Region	Wisconsin
Country Code	United States of America
Postal Code	54935
ISP	Charter Communications Inc
Time Zone	-05:00

ipdata.co Results

IP Address	24.196.117.82
ASN	20115
City	Sheboygan
State/Region	Wisconsin
Country Code	US
Postal Code	53081
ISP	Charter Communications
Time Zone	America/Chicago

IP2Location.com Results

Update This Info

Report IP Abuse

Is This IP Blacklisted

IP Address Lookup

An IP address lookup will determine the location of any IP address. The results have quite a bit of information. The results include information like the city, state/region, postal/zip code, country name, ISP, and time zone. Consequently, this data is used by various agencies to find the owner of an IPv4 or IPv6 address.

41. Hasenstein next sought to determine who tried to connect through the Administrator account from the IP address 24.196.117.82. To investigate, he first performed a scan on the IP address 24.196.117.82 using a tool called nmap. Nmap is a network scanning tool that allows a user to identify all devices connected to a network and to provide information about those devices.

42. Below is a screenshot of the results that were returned when Hasenstein performed an nmap scan on IP address 24.196.117.82.

```
pi@b827ebe76ef9: ~  
File Edit Tabs Help  
pi@b827ebe76ef9:~$ nmap 24.196.117.82  
Starting Nmap 7.70 ( https://nmap.org ) at 2021-03-24 10:23 CDT  
Nmap scan report for 024-196-117-082.biz.spectrum.com (24.196.117.82)  
Host is up (0.046s latency).  
Not shown: 993 closed ports  
PORT      STATE      SERVICE  
113/tcp    filtered    ident  
135/tcp    filtered    msrpc  
139/tcp    filtered    netbios-ssn  
445/tcp    filtered    microsoft-ds  
593/tcp    filtered    http-rpc-epmap  
1723/tcp   open       pptp  
3389/tcp   open       ms-wbt-server  
  
Nmap done: 1 IP address (1 host up) scanned in 4.01 seconds  
pi@b827ebe76ef9:~$
```

43. As shown above, the nmap scan indicated that the IP address was associated with a Spectrum Business IP address—“024-196-117-082.biz.spectrum.com.” The nmap scan also reported that port number 3389 (a remote desktop service port; also called an RDP port) was open on this IP address. Because none of PalCare’s programmers or technicians have a Spectrum Business account, Hasenstein immediately blocked the Administrator account due to likely unauthorized access.

44. Hasenstein next attempted to find out more information regarding the remote desktop that had accessed RDP port 3389. He instructed a PalCare lead technician to perform a further nmap scan of the RDP port on 24.196.117.82. Below is a screenshot of the nmap results from March 22, 2021.

```

Starting Nmap 7.80 ( https://nmap.org ) at 2021-03-22 20:06 CDT
Nmap scan report for 024-196-117-082.biz.spectrum.com (24.196.117.82)
Host is up (0.026s latency).

PORT      STATE SERVICE
3389/tcp  open  ms-wbt-server
| rdp-ntlm-info:
|   Target_Name: Intrac
|   NetBIOS_Domain_Name: Intrac
|   NetBIOS_Computer_Name: INTRAC-TS1
|   DNS_Domain_Name: office.intractechnology.com
|   DNS_Computer_Name: Intrac-TS1.office.intractechnology.com
|   DNS_Tree_Name: office.intractechnology.com
|   Product_Version: 6.3.9600
|_  System_Time: 2021-03-23T01:06:24+00:00

Nmap done: 1 IP address (1 host up) scanned in 0.53 seconds

```

45. As shown above, the nmap scan indicated that the server hosting the remote desktop was a server owned or hosted by Intrac Technology (“Intrac”). For example, the domain name of the server was listed as office.intractechnology.com, and the computer name of the server was listed as Intrac-TS1.office.intractechnology.com.

46. As discussed above, Intrac is the IT consulting company that Narbatovics joined immediately upon his departure from PalCare, and before he joined Notify. Narbatovics has previously stated that he is a part owner of Intrac.

47. After performing the nmap scans discussed above, Hasenstein copied all of the logs in the /var/log/gitlab/ directory to his computer. The /var/log/gitlab/ directory contains all of the log files associated with PalCare’s GitLab account. These log files set forth all access activity, including download activity, associated with PalCare’s various GitLab file directories. Hasenstein used a program called 7 Zip to extract all of the logs into one directory. Using another program called Agent Ransack, which is a free file search tool, Hasenstein searched all of the logs for the IP address 24.196.117.82 and discovered multiple instances when that IP address had logged into the PalCare system.

48. The forensic analysis showed that IP address 24.196.117.82 also accessed the GitLab on February 26, 2021. On that date, activity associated with this IP address included a download of the copyrighted master branch of PalCare's Pal Base 3 source code and the Tod2 branch of PalCare's Pal Base 3 source code:

```
{"method":"GET","path":"/","format":"html","controller":"RootController","action":"index","status":302,"duration":16.82,"view":0.0,"db":0.41,"location":"https://gitlab.palatiumcare.com/users/sign_in","time":"2021-02-26T19:53:22.926Z","params":[],"remote_ip":"24.196.117.82","user_id":null,"user_name":null,"ua":"Mozilla/5.0 (Macintosh; Intel Mac OS X 10_15_7) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/88.0.4324.192 Safari/537.36","queue_duration":null,"correlation_id":"eO4pVzXX2K3","cpu_s":0.022584698000173375}
```

Started GET "/Applications/pal-base-3/-/archive/master/pal-base-3-master.zip" for 24.196.117.82 at 2021-02-26 13:53:57 -0600

Started GET "/Applications/pal-base-3/-/archive/Tod2/pal-base-3-Tod2.zip" for 24.196.117.82 at 2021-02-26 13:54:11 -0600

49. The copyrighted Pal Base 3 code is stored on and operates PalCare's "green server." The code that was downloaded is used to operate PalCare's Nurse Call System and Network Operations Center.

50. Hasenstein later compared the IP address associated with the Administrator account (24.196.117.82) with the IP addresses of known users in PalCare's GitLab account, including both active and disabled user accounts. The IP address matched Narbatovics' disabled user account, which had a "Last sign-in IP" of 24.196.117.82. The forensic analysis showed that this IP Address was last used by Narbatovics' account on November 17, 2020. Additionally, there was "Current sign-in IP" of 24.208.65.237 associated with Narbatovics' account that occurred on December 1, 2020.

51. In an attempt to determine the source of Narbatovics' "Current sign-in IP" address of 24.208.65.237, Hasenstein sought to determine the IP address of a Plex¹ computer server that Narbatovics has at his home. Narbatovics shares his home Plex server with Hasenstein.

52. Hasenstein logged into his Plex account through the Google Chrome web browser and started playing a movie from Narbatovics' home Plex server. Once the movie started playing, Hasenstein opened the Windows Resource Monitor, a tool that displays information about the use of hardware and software resources in real time, to determine which Chrome process was receiving the most bytes per second (B/s), as this would be the process playing the Plex movie. He then checked the IP address this process was connected to and confirmed that it was 24.208.65.237—the same address as the "Current sign-in IP" last used with Narbatovics' account on December 1, 2020.

53. Hasenstein then returned to the GitLab log files that he had downloaded from var/log/gitlab/ to his computer. Again using the file search tool Agent Ransack, he searched the log files for the IP address of Narbatovics' home Internet connection, 24.208.65.237. The log file "production.log.5" documented a connection attempt from Narbatovics' home server (24.208.65.237) that occurred on March 19, 2021. The log showed that this attempt came from an Intel Mac OS X 10.15.7 computer, the same computer referenced in paragraph 48.

54. After this initial investigation, PalCare blocked the two IP addresses associated with Narbatovics and enabled logging for any connection attempt from those IP addresses to PalCare's secure server. On March 29, 2021, Narbatovics attempted several times to connect to

¹ According to Wikipedia, "Plex is a global streaming media service and a client-server media player platform, made by Plex, Inc. The Plex Media Server organizes video, audio, and photos from a user's collections and from online services, and streams it to the players." Plex (Company), [https://en.wikipedia.org/wiki/Plex_\(company\)](https://en.wikipedia.org/wiki/Plex_(company)) (last visited Mar. 30, 2021).

PalCare's GitLab server. As shown below, each of those attempts, coming from IP address 24.208.65.237, was denied:

The screenshot shows the Peplink Status page with the Firewall Event Log tab selected. The log displays a series of denied connection attempts from the source IP 24.208.65.237 to the destination IP 192.168.0.242 on March 29, 2020. The log entries show details such as SRC, DST, LEN, TOS, PREC, TTL, ID, DF, and PROTO for each attempt.

Time	Event	Details
Mar 29 15:51:06	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53138 DF PROTO=TCP SPT=58882 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:51:06	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53137 DF PROTO=TCP SPT=58879 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:51:04	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53136 DF PROTO=TCP SPT=58882 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:51:04	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53135 DF PROTO=TCP SPT=58879 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:51:03	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53134 DF PROTO=TCP SPT=58882 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:51:03	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53133 DF PROTO=TCP SPT=58879 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:50:47	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53132 DF PROTO=TCP SPT=58868 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:50:47	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53131 DF PROTO=TCP SPT=58867 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7
Mar 29 15:50:43	Firewall: Denied	CONN=WAN1 MAC=10:56:ca:08:ce:79:a8:4e:3f:e0:6e:e2:08:00 SRC=24.208.65.237 DST=192.168.0.242 LEN=52 TOS=0x00 PREC=0x00 TTL=113 ID=53130 DF PROTO=TCP SPT=58868 DPT=443 WINDOW=64240 RES=0x00 SYN URG=0 MARK=0x7

55. Hasenstein later conducted a further investigation to determine whether there was even earlier access by Narbatovics of PalCare's GitLab account. Hasenstein determined that there were multiple instances of the IP address 24.196.117.82 (the same IP address Hasenstein first noticed was associated with the Administrator account) accessing PalCare's system on October 28, 2020. Specifically, Hasenstein noted the following activity where Narbatovics downloaded files related to the PalCare Device Test Suite source code:

24.196.117.82 - - [28/Oct/2020:13:27:04 -0500] "GET /Applications/device-test-suite/-/blob/master/main.py HTTP/2.0" 200 13193
 "https://gitlab.palatiumcare.com/Applications/device-test-suite" "Mozilla/5.0 (Macintosh; Intel Mac OS X 10_15_7) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/86.0.4240.80 Safari/537.36"

24.196.117.82 - lnarbatovics [28/Oct/2020:13:28:05 -0500] "GET /Applications/device-test-suite.git/info/refs?service=git-upload-pack HTTP/2.0" 200 239 "" "git/2.24.3 (Apple Git-128)"

Started GET "/Applications/device-test-suite" for 24.196.117.82 at 2020-10-28 13:27:26 -0500

56. The PalCare Device Test Suite is specifically designed and used to test PalCare's copyrighted Pal Base 3 source code running on a server. There is no other purpose for which the PalCare Device Test Suite would be used.

57. Upon review of those additional logs, Hasenstein identified additional instances of Narbatovics accessing and downloading PalCare's code. At this time, PalCare is aware of Narbatovics downloading code from its secure Gitlab account on the following occasions:

<u>Date</u>	<u>Action</u>
10/13/2020	Download of Pal Base 3 code
10/19/2020	Download of Pal Base 3 code
10/26/2020	Download of Pal Base 3 code
10/26/2020	Download of Pal Base 3 code (second time)
10/28/2020	Download of Device Test Suite code
10/31/2020	Download of Pal Base 3 code
11/6/2020	Download of Pal Base 3 code
11/16/2020	Download of Pal Base 3 code
11/19/2020	Download of Pal Base 3 code
2/26/2021	Download master branch of Pal Base 3 code
2/26/2021	Download Tod2 branch of Pal Base 3 code

58. In addition, Hasenstein examined the company's firewall, which blocks unauthorized users from accessing the Gitlab account. Hasenstein learned that the firewall was not set to record a log of unauthorized attempted connections to the Gitlab account. Hasenstein turned on this logging function and was able to determine that Narbatovics continued to try to access the Gitlab account on at least March 29, 2021, April 6, 2021, and April 25, 2021. Notably, the latest access attempt occurred *after* the Sheboygan County Circuit Court for the State of Wisconsin had granted PalCare's motion for temporary restraining order on April 9, 2021. The Circuit Court's restraining order expressly ordered Narbatovics to "[r]efrain from

accessing or attempting to access PalCare's intellectual property, confidential information and trade secrets unless authorized by PalCare."

59. In an April 6, 2021 email, Narbatovics admitted that he accessed PalCare's secure GitLab account following the termination of his employment and downloaded copyrighted code from this account:

From: Lucas Narbatovics <lnarbatovics@notifync.com>
Sent: Tuesday, April 6, 2021 1:04 PM
To: Craig Patnode <craig@simplyconnect.me>
Subject: DRAFT Return of PalCare Property

I certify that I have deleted any and all PalCare proprietary information on any and all computers in my possession including code, documents, virtual machine images, etc., I am returning that to you on an external hard drive.

I have not utilized this code to produce any product at Notify, nor have I shared or disclosed it to any person.

Casey prior to my leaving, we had made the trade of swap of my personal laptop for the MacBook Pro that I used at PalCare. You and I had discussed the possibility of myself doing contract work and had left that door open, at that time we both acknowledged that I had copies of the code on that laptop.

Yes I did login to the Gitlab server to verify if you had removed my access to the system, when I was able to successfully login I communicated that fact to a PalCare employee and who requested multiple times that my access should be blocked. I acknowledge that I pressed a download button that I should not have with no malicious intent towards PalCare nor any intent to use that information.

I invite a forensic search of my laptop and any/all of my personal computers to verify these facts.

Please let me know what you think.

Thanks,

Lucas Narbatovics

920-254-7239
www.notifync.com

60. In his April 6, 2021 email and in testimony provided under oath, Narbatovics said that, upon leaving PalCare, he took a MacBook laptop containing substantial amounts of PalCare's copyrighted source code. According to Narbatovics, the MacBook laptop contained "probably almost the entirety of all of the source code that [he] was responsible for" at PalCare, including, but not limited to, "[m]ultiple versions from its inception" of the copyrighted Pal Base 3 source code. PalCare did not give Narbatovics permission to take source code upon his

departure from the Company, nor did it authorize him to access its copyrighted source code after he left.

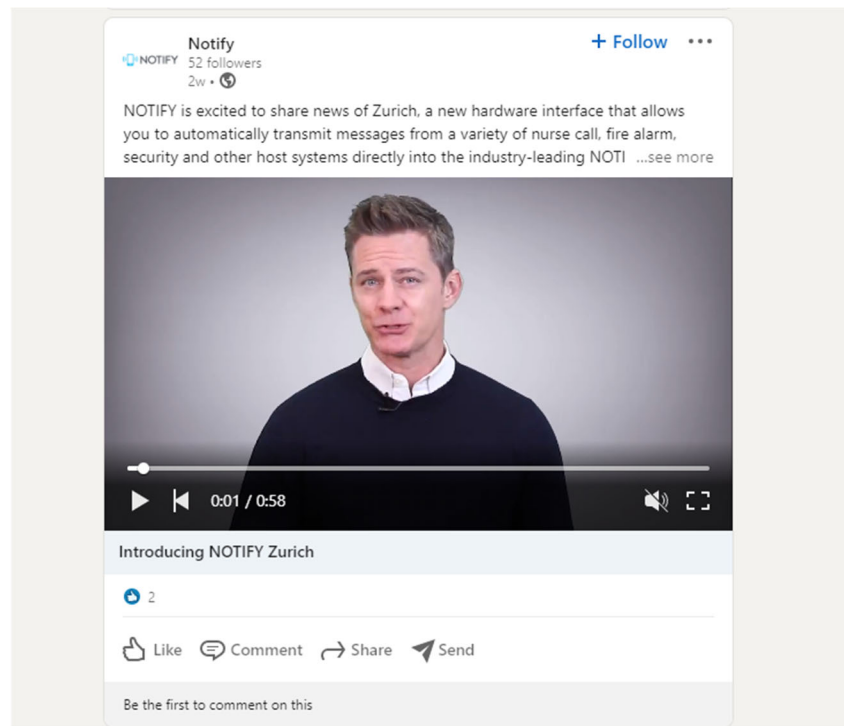
61. After the filing of the State Court Action, Narbatovics wiped the MacBook laptop clean. In so doing, Narbatovics “erased all evidence of [his] accessing of the computer and what files on the computer [he] accessed,” as he confirmed in testimony provided under oath.

Notify, With Narbatovics’ Help and the Source Code He Stole From PalCare, Quickly Develops an Infringing Product Called “Notify Zurich”

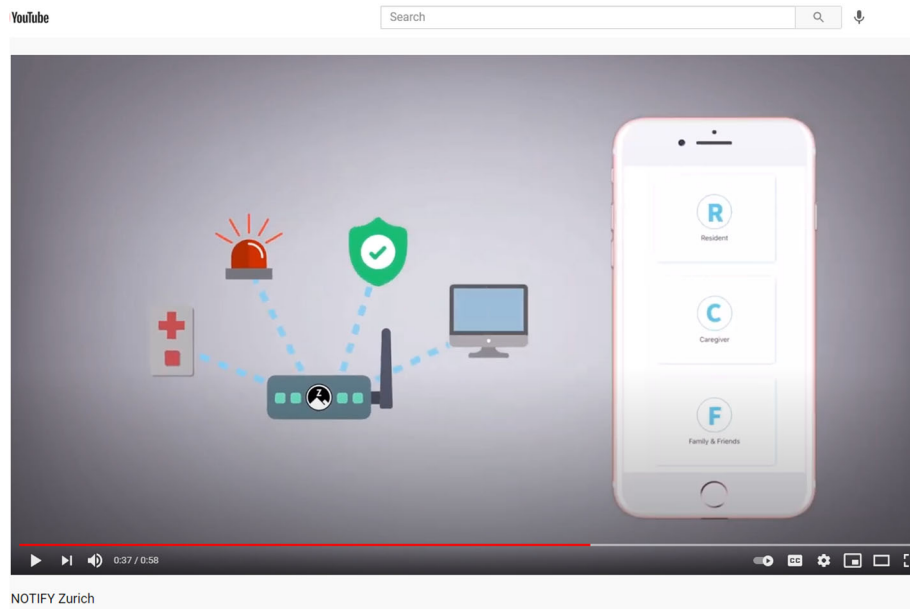
62. Notify recently launched a new product that directly competes with the PalCare server called Notify Zurich. Much like the PalCare “green server,” Zurich is a server that is installed onsite at a client senior living facility. The Zurich platform is a server that relays emergency signals from certain hardwired devices and transmits those signals wirelessly to the end users via the Notify application or otherwise. Greg Robertson, Notify’s Senior Vice President and General Manager, testified under oath that Narbatovics worked on developing Zurich, that Zurich was first deployed to a customer in December 2020 after Narbatovics began working for Notify, and that Notify was not offering Zurich until after November 2020, when Narbatovics became a full-time employee at Notify.

63. In fact, Narbatovics testified under oath that he was the Notify employee in charge of architecting Zurich, that Zurich was the exclusive Notify product that he was working on, and that, at least through the end of February 2021, he was the only Notify employee working on Zurich. Narbatovics further testified that he used the Python programming language to code Zurich—the same programming language in which PalCare’s copyrighted source code was written.

64. On April 26, 2021, Notify released a marketing video on social media titled “Notify Zurich.” A screenshot of this marketing video as it exists on LinkedIn is below:



65. In that video, Notify states that it is “excited to announce Notify Zurich,” which is “a new hardware interface that allows you to automatically transmit messages from a variety of nurse call, fire alarm, and other host systems” to the Notify application. Narbatovics confirmed this as well, testifying that “Zurich takes information in multiple ways from various nurse call systems . . . and pulls bits of information out of their specific outputs to create a Notify alert.” The video includes a diagram of how Zurich works. This diagram demonstrates the similarities between Zurich and the PalCare server:



66. Like PalCare’s green server, Notify’s new Zurich platform transmits signals from a hardwired device such as pullcord and relays those signals to the Notify application.

Notify Uses PalCare’s Copyrighted Source Code to Solicit PalCare’s Clients

67. PalCare learned that Notify solicited PalCare clients using source code copied from or derivative of PalCare’s copyrighted Pal Base 3 code.

68. For example, Gischia has admitted that, in October 2020, he attempted to sell Notify and PalCare products—that included portions of PalCare’s copyrighted source code—to HarborChase, a PalCare customer, on Notify’s behalf without PalCare’s authorization.

69. Notify also has approached at least two other PalCare customers to discuss the capabilities of its new Notify Zurich platform.

70. Notify has been marketing its new Zurich platform to PalCare’s own customers and describing Notify Zurich as Notify’s own version of the “green server.” PalCare’s “green server” runs the copyrighted Pal Base 3 source code accessed and copied by Narbatovics. This code took over three years and millions of dollars for PalCare to develop.

71. As confirmed by Notify's Robertson, one of the PalCare clients that Notify approached was John Storm, the president of Storm Medical Equipment, Inc. Storm was first approached by Gischia on Notify's behalf. Gischia later involved Narbatovics in the conversation so that he could provide technical details regarding Notify's new product offering, Notify Zurich. Narbatovics and Gischia attempted to convince Storm to sell Notify products. They told Storm that Notify now has its own "green server" that can do everything PalCare's server can do.

72. Robertson also testified that Notify tried to sell Notify Zurich to Direct Supply, another PalCare customer. A senior sourcing manager at Direct Supply told PalCare that Notify had reached out to partner with Direct Supply. During that solicitation, Notify indicated that it now had its own interface that could be used with a hardwired nurse call system—a product offering that Notify did not have prior to Narbatovics and Gischia joining the company.

73. Both clients have told PalCare about Notify's attempts to solicit their business by saying that Notify now has the same product that PalCare has. That product, Notify Zurich, relies on the copyrighted Pal Base 3 "green server" source code that was repeatedly copied by Narbatovics in the months after his employment with PalCare ended.

74. Notify knew that Storm Medical, Direct Supply, and HarborChase were PalCare customers based on the fact that PalCare expressly identified them as customers pursuant to the MSA and based on Gischia's knowledge as PalCare's former VP of Business Development.

Defendants' Infringement Has Harmed PalCare

75. Narbatovics engaged in a systematic raid of PalCare's secure server to view and extract critical, copyrighted source code. The theft and infringement of PalCare's copyrighted source code by itself is a significant injury.

76. The harm is compounded by Notify's use of that stolen source code to compete directly with PalCare. With Narbatovics' help, Notify recently launched Notify Zurich, a server platform that competes directly with the product supported by the very same code that was stolen by Narbatovics. Indeed, Narbatovics testified that he alone at Notify designed the architecture for and developed Zurich; Narbatovics used the same Python coding language for Zurich that PalCare used for its "green server." This, too, constitutes significant harm to PalCare because PalCare now faces unfair competition.

77. Because PalCare's copyrighted Pal Base 3 source code fell into the hands of Notify, Notify was able to launch a directly competing product without having to invest the time and money that it would otherwise take to develop a competing product without having the benefit of PalCare's source code. This reduces PalCare's competitive advantage in the market in multiple ways, including, but not limited to, by unfairly reducing the amount of time that PalCare has to establish market presence in the absence of competition from Notify, and by allowing Notify to develop a competing product at less cost and in less time.

FIRST CLAIM FOR RELIEF
Copyright Infringement, 17 U.S.C. §§ 101, et seq.

78. PalCare repeats and realleges the allegations contained in Paragraphs 1 through 77 as if set forth fully herein.

79. PalCare's Pal Base 3 and Device Test Suite source code are original and creative expressive works that constitute copyrightable subject matter under 17 U.S.C. §§ 101, *et seq.* PalCare owns and has owned all rights and privileges in these works at all relevant times.

80. PalCare owns valid and subsisting U.S. copyright registrations protecting the PalCare Code.

81. Defendants had access to PalCare's copyrighted Pal Base 3 and Device Test Suite source code.

82. Defendants deliberately and intentionally copied protectable expression owned by PalCare in the Pal Base 3 and Device Test Suite source code without authorization or consent in the manner complained of herein.

83. By their actions described above, Defendants have infringed PalCare's copyrights by, without limitation, copying, making derivative works of, publicly displaying, and/or distributing the PalCare Code, without authorization from PalCare.

84. Defendants' infringement has been deliberate and with willful disregard of PalCare's rights. Defendants knew that their conduct was an infringement of PalCare's copyrights in the PalCare code or, at the very least, acted in reckless disregard of PalCare's copyrights.

85. As a direct result of Defendants' infringement, pursuant to 17 U.S.C. § 504(b), PalCare is entitled to actual damages and any profits of Defendants that are attributable to their infringement and are not taken into account in computing the actual damages. PalCare's actual damages and Defendants' profits are not currently ascertainable and will be proven at trial. Alternatively, pursuant to 17 U.S.C. § 504(c)(2), PalCare is entitled to statutory damages, in an amount to be proven at trial, for Defendants' willful copyright infringement.

86. PalCare is further entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

87. Defendant's conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, PalCare great and irreparable injury that cannot fully be compensated or measured in money. Pursuant to 17 U.S.C. §§ 502 and 503, PalCare is entitled to injunctive

relief (i) prohibiting Defendants from further infringing PalCare's copyrights and (ii) ordering Defendants to destroy all copies of any infringing materials in Defendants' possession, including, but not limited to, any copies of the PalCare Code and any Notify code copied or derived from the PalCare Code.

PRAYER FOR RELIEF

WHEREFORE, PalCare requests the following relief in this case:

- A. A declaration that the actions of Defendants, as set out above, violate the Copyright Act;
- B. An award of damages in an amount to be proven at trial;
- C. An award equal to Defendants' profits relating to the Zurich platform or any other Notify product copied, created, or derived from the PalCare Code;
- D. Alternatively, and at PalCare's election, an award of statutory damages for copyright infringement pursuant to 17 U.S.C. § 504(c), such award being equal to the maximum amount allowed under the statute for willful infringement;
- E. That Defendants be preliminarily and permanently enjoined from further infringement of PalCare's copyrights; and
- F. An order requiring Defendants to destroy all copies of any infringing materials in Defendants' possession, including, but not limited to, any copies of the PalCare Code and any Notify code copied or derived from the PalCare Code.
- G. An award of PalCare's attorneys' fees and costs pursuant to 17 U.S.C. § 505; and
- H. Any other such relief to PalCare as this Court deems just.

DEMAND FOR JURY TRIAL

PalCare respectfully demands a jury trial on all issues and claims so triable.

Dated this 22nd day of February, 2022,

GODFREY & KAHN, S.C.

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